
GENERAL NOTICE

NOTICE 1282 OF 2006

DEPARTMENT OF PUBLIC ENTERPRISES

NOTICE INVITING COMMENT ON PROPOSED AMENDMENTS TO THE TRANSNET PENSION FUND ACT, 1990 (ACT NO. 62 OF 1990)

The Minister of Public Enterprises intends to make amendments to the provisions of the Transnet Pension Fund Act, 1990 (Act No. 62 of 1990)

Interested persons are hereby invited to submit written comments or written representations on the proposed amendments, within 30 days of the date of publication of this notice at any of the following addresses:

For attention: Ursula Nobulali Fikelepi/ Denzel Matjila
Legal, Governance and Secretariat

Post to: Private Bag X15
Hatfield
0028

Or deliver to: Suite 401
Infotech Building 1090
Arcardia Street
Hatfield
0083

Or fax no: (012) 342 4146

Or e-mail to: Denzel.Matjila@dpe.gov.za

Please note that comments received after the closing date may be disregarded.
Ursula/ Denzel can be reached at tel. (012) 431 1194/ 431 1131 for any enquiries.

Transnet Pension Fund Amendment Bill

(MINISTER OF PUBLIC ENTERPRISES)

[B – 2006]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the Transnet Pension Funds Act, 1990, with effect from 11 November 2005, so as to amend definitions and to insert new definitions; to rename the Transnet Pension Fund “the Transport Pension Fund” to reflect its new status as an umbrella defined benefit fund for persons who were members of the fund as at 11 November 2005 and who will become employed by the state or national government business enterprises outside of Transnet following the disposal by Transnet of non-core assets and businesses, which new employer, or which holding company of which new employer has become approved as a new Principal Employer for the purposes of the fund; to provide that such members may remain members of the fund while those who become employed by private sector organizations may not; to provide that the governance and management of the Transport Pension Fund will be determined in terms of General Rules which may be amended with the approval at least one Principal Employer, the Minister of Public Enterprises with the concurrence of the Minister of Finance and that the contributions and benefits applicable to members and beneficiaries related to different employers be determined in terms of Special Rules applicable to them and the Sub-Funds in the Transport Pension to which they and the Fund’s liabilities towards them and their related beneficiaries will be assigned and that such Special Rules may be amended with the approval of the applicable Principal Employers, the Minister of Public Enterprises with the concurrence of the Minister of Finance; to confer upon Sub-Fund Committees to be established in respect of each Sub-Fund of the Transport Pension Fund certain powers and responsibilities that would otherwise have been powers and responsibilities of the board of trustees of the Fund; to provide for the valuation of each Sub-Fund of the Transport Pension Fund as if it were a stand-alone fund and to limit the liabilities of each employer that participates in the Transport Pension Fund to liabilities in relation to the Sub-Fund applicable to that employer; to provide for deductions from benefits of amounts which must be deducted in terms of orders granted in terms of the Maintenance Act; to remove references to dismissal and resignation from the clause authorizing the deduction from benefits of

amounts owing to an employer or the Benevolent Fund and to allow for such deductions on termination of employment for any reason and also to allow for deductions of amounts owing to third parties who provide housing finance backed by fund guarantees; to protect the special tax status of the Transport Pension Fund in the event that it becomes registered in terms of the Pension Funds Act; to give the Minister the power to make regulations in terms of the Act, and to provide for matters related or incidental to such matters.

Be it enacted by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 62 of 1990

1. Section 1 of the Transnet Pension Fund Act, 1990 (Act No. 62 of 1990) is hereby amended with effect from 11 November 2005 –

1.1. by the insertion of a definition of “actuary” as follows:

“actuary” means an actuary who is a fellow of an institute, faculty, society or chapter of actuaries approved by the Minister of Finance;

1.2. by the deletion of the definition of “Company”;

1.3. by the insertion, after words introducing section 1, of the following definition of “Dependant Pensioner”:

“Dependant Pensioner” means, in relation to the Transport Pension Fund, a person who is entitled to a pension paid by the fund and whose entitlement to that pension is derived from the membership of the fund of a deceased member or deceased Pensioner of the fund;

1.4. by substituting for the definition of “employer” the following definition of “Employer”:

“[e]Employer” means [**the Company or any other company of which an employee is a member of the Fund**] a Transnet Employer or an SOE Employer”;

1.5. by the deletion of the definition of “Fund”;

1.6. by the insertion after the definition of “Employer” the following definition of “General Rules”:

“General Rules” means, in relation to the Transport Pension Fund, the Rules applicable to the Transport Pension Fund as a whole;

- 1.7. by the substitution for the definition of “Minister” the following definition of “Minister”:

“Minister” means the Minister or Ministers [of Mineral and Energy Affairs and Public Enterprises] responsible for Transnet;

- 1.8. by the insertion after the definition of “Pension Fund” the following definition of “Pensioner”:

“Pensioner” means, in relation to the Transport Pension Fund, a person who is entitled to a pension paid by the fund and whose entitlement to that pension is derived from his or her membership of the fund”;

- 1.9. by the insertion after the definition of “Pensioner” the following definition of “Principal Employer”:

“Principal Employer means –

- (a) Transnet; or
- (b) each SOE Employer which by agreement between Transnet and the Minister is accepted as a Principal Employer for the purposes of this Act”;

- 1.10. by the substitution for the definition of “Rules” the following definition of “Rules”:

“Rules” means the Rules referred to in section 5 of this Act, comprising the General Rules and all Special Rules;

- 1.11. by the deletion of the definition of “Second Fund”;

- 1.12. by the insertion after the definition of “Rules” of the following definition of “SOE Employer”:

“SOE Employer” means

- (a) the State; or
- (b) a national government business enterprise or national public entity as defined by the Public Finance Management Act, 1999 (Act No. 1 of 1999), other than Transnet, which, by agreement between Transnet and the Minister, is accepted as an Employer for the purposes of this Act; or
- (c) any other company in which an entity referred to in (a) or (b) owns one or more shares, and
 - (i) which employed persons who as at 11 November 2005 were members of any fund established in terms of this Act; and
 - (ii) which, by agreement between Transnet and the Minister, is accepted as an Employer for the purposes of this Act”;

- 1.13. by the insertion after the definition of “SOE Employer” of the following definition of “SOE Group of Employers”:

“SOE Group of Employers” means an SOE Employer which is a Principal Employer, and any other SOE Employer in which that Principal Employer owns shares; provided that if more than one Principal Employer owns shares in an SOE Employer, the SOE Employer will fall within the SOE Group of Employers of the Principal Employer other than Transnet which owns more shares in it than any other Principal Employer;”

- 1.14. by the insertion after the definition of “SOE Group of Employers” the following definition of “Special Rules”:

“Special Rules” means, in relation to the Transport Pension Fund, the rules of the fund applicable to a Sub-Fund of that fund alone;

- 1.15. by the insertion after the definition of “Special Rules” of the following definition of “Sub-Fund”:

“Sub-Fund” means, in relation to the Transport Pension Fund, that part of the fund –

- (i) to which members, Pensioners, Dependant Pensioners other beneficiaries, assets and liabilities of the fund are attributable in terms of section 5(4);
and
- (ii) which is governed by Special Rules and General Rules;

- 1.16. by the insertion after the definition of “Sub-Fund” of the following definition of “Sub-Fund Committee”:

“Sub-Fund Committee” means, in relation to the Transport Pension Fund, the Committee contemplated in subsections 5(6) and 5(7);

- 1.17. by the insertion after the definition of “Sub-Fund Committee” of the following definition of “Subsidiary”:

“Subsidiary” means a Subsidiary as contemplated in section 1(3)(a) of the Companies Act, 1973, or any section or statute which replaces it;

- 1.18. by the insertion after the definition of “Subsidiary” the following definition of “Transnet”:

“Transnet” means Transnet Limited, formed and incorporated in terms of section 2 of the Legal Succession to the South African Transport Services Act, 1989;

- 1.19. by the insertion after the definition of “Transnet” the following definition of “Transnet Employer”:

“Transnet Employer” means Transnet or any other company contemplated in the definition of Transnet Group of Employers;

- 1.20. by the insertion after the definition of "Transnet Employer" the following definition of "Transnet Group of Employers":

"Transnet Group of Employers" means –

- (i) Transnet;
- (ii) any company formed in terms of section 32 of the Legal Succession to the South African Transport Services Act, 1989 excluding any such company in which Transnet does not own shares;
- (iii) any company of which Transnet or any of its Subsidiary companies is a shareholder but excluding a company which is within an SOE Group of Employers;

- 1.21. by the insertion after the definition of "Transnet Group of Employers" of the following definition of "Transport Pension Fund"

"Transport Pension Fund" means the fund established in terms of section 2 of this Act and previously named the Transnet Pension Fund;

- 1.22. by the insertion after the definition of "Transport Pension Fund" of the following definition of "Transnet Retirement Fund"

"Transnet Retirement Fund" means a fund established with that name in terms of section 14A of this Act;

- 1.23. by the insertion after the definition of "Transnet Retirement Fund" of the following definition of "Transnet Second Defined Benefit Fund":

"Transnet Second Defined Benefit Fund means the fund established under that name in terms of section 14B(1) of this Act; and

- 1.24. by the insertion after the definition of "Transnet Second Defined Benefit Fund" of the following definition of "valuator":

"valuator" means an actuary approved by the Registrar of Pension Fund as a valuator for the purposes of the valuation of retirement funds and appointed in terms of section 6(1).

Amendment of section 2 of Act 62 of 1990

2. Section 2 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 –

- 2.1. by the deletion of its heading and its replacement with the following heading:

“Disestablishment of the New Fund and the Pension Fund and establishment of the Transport Pension Fund”

- 2.2. by the insertion in subsection (1) of the words “Transport Pension” before the word “Fund” wherever it appears in the subsection; and
- 2.3. by the insertion in subsection (2) of the words “Transport Pension” before the word “Fund” wherever it appears in the subsection.

Amendment of section 3 of Act 62 of 1990

3. Section 3 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by its deletion and replacement with the following section 3:

“Obligations which, in terms of regulations promulgated in terms of the Railways and Harbours Pensions Act, 1971, and the Railways and Harbours Pensions for Non-Whites Act, 1974, read in conjunction with section 36 [(7)] of, and item (10) (a) of Schedule 2, Part 7, to, the Legal Succession to the South African Transport Services Act, 1989, are payable out of the revenue of [the employer] Transnet shall continue to be payable, but shall be payable out of [such] the revenue of one or more Employers in such proportions as may be agreed between them or, failing such agreement, as the Minister, acting with the concurrence of the Minister of Finance, deems equitable.”

Amendment of section 4 of Act 62 of 1990

4. Section 4 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by the insertion of the words “Transport Pension” before the word “Fund” wherever it appears in the section.

Amendment of section 5 of Act 62 of 1990

5. Section 5 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005-

- 5.1. by the substitution for its heading of the following heading:

“Rules of the Transport Pension Fund”

- 5.2. by the substitution for subsection (1) of the following subsection:

“The control and management of the Transport Pension Fund, admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by the E[mployers], and the benefits due to pensioners and other beneficiaries, the terms and conditions under which members of the Transport Pension Fund may elect to have their rights ceded, and assets commensurate with such rights transferred from the Transport Pension”

Fund to a pension fund established by the Minister in terms of section 14A (2), and the manner in which the Rules of the Transport Pension Fund may be amended, shall be governed by the Rules of the Transport Pension Fund.”

- 5.3. by the deletion of subsection (2).
- 5.4. by the renumbering of subsection (3) to read subsection (2) and the substitution for that subsection of the following subsection:

“[Prior to the date of registration of the Fund in terms of section 13 of this Act, any amendment of the Rules shall be subject to the approval of the Employer and the Minister, acting with the concurrence of the Minister of Finance] Any amendment of –

- (a) the General Rules shall be made by the board of trustees subject to the approval of at least one Principal Employer and of the Minister, acting with the concurrence of the Minister of Finance; and
- (b) the Special Rules applicable to a Sub-Fund shall be made by the applicable Sub-Fund Committee subject to the approval of the applicable Principal Employer and of the Minister acting with the concurrence of the Minister of Finance.”

- 5.5. by the renumbering of subsection (4) to read subsection (3) and the substitution for that subsection of the following subsection:

“The Rules of the Transport Pension Fund as amended from time to time shall be binding on [the] each Employer, its members, Pensioners, Dependant Pensioners, other beneficiaries and the Transport Pension Fund.”

- 5.6. by the insertion of the following new subsection (4)

“Following the date of commencement of the Transnet Pension Fund Amendment Act, 2006, and with effect from each date upon which an Employer other than Transnet becomes a new Principal Employer, the Transport Pension Fund will be divided into Sub-Funds in the names of each Principal Employer to which will be assigned –

- (a) each person who was a member of the fund, other than a Pensioner, as at 11 November 2005, who has not since then ceased to be a member, and who is employed by the Principal Employer or by an Employer related to the Principal Employer as contemplated in the definition of Transnet Group of Employers or SOE Group of Employers, whichever is applicable;
- (b) each Pensioner who immediately before his or her retirement was employed by –
- (i) the Principal Employer or an Employer related to the Principal Employer as contemplated in the definition of Transnet Group of

- Employers or SOE Group of Employers, whichever is applicable;
or
- (ii) a different Principal Employer or an Employer related to that different Principal Employer as contemplated in the definition of Transnet Group of Employers or SOE Group of Employers, whichever is applicable if –
- (aa) the business in which the Pensioner was employed at retirement was subsequently transferred to the Principal Employer or Employer related to it; or
- (bb) shares in the company by which the Pensioner was employed at retirement were subsequently transferred to the Principal Employer or Employer related to it;
and the parties to the transaction referred to in (aa) or (bb) have agreed that the Pensioner be assigned to the Sub-Fund.
- (c) each Dependant Pensioner whose right to a pension is derived from the membership of –
- (i) a member who died while employed by the Principal Employer or an Employer related to it as contemplated in the definition of Transnet Group of Employers or SOE Group of Employers, whichever is applicable; or
- (ii) a member who died while employed by a different Principal Employer or an Employer related to it as contemplated in (i) above if –
- (aa) the business in which the member was employed at his or her death was subsequently transferred to the Principal Employer or Employer related to it; or
- (bb) shares in the company by which the member was employed at his or her death were subsequently transferred to the Principal Employer or Employer related to it,
and the parties to the transaction contemplated in (aa) or (bb) have agreed that the Dependant Pensioner be assigned to the Sub-Fund;
or
- (iii) a Pensioner who died while allocated to the Sub-Fund; or
- (iv) a Pensioner who died while allocated to a different Sub-Fund if the Principal Employer to which that Sub-Fund is attributable and the Principal Employer have agreed that the Dependant Pensioner be allocated to the Sub-Fund;
- (d) the liabilities, assets, rights and obligations of the Transport Pension Fund in respect of the persons contemplated in (a), (b) and (c) above, as determined by the board of trustees of the fund in consultation with the fund's valuator and, if the transferor Sub-Fund's Principal Employer and the transferee Sub-Fund's Principal Employer so require, also in consultation with an actuary or actuaries appointed by those Principal Employers, which shall vest in and devolve upon the transferee Sub-Fund, following which a person contemplated in (a), (b) or (c) shall have no claim upon the assets of any Sub-Fund other than the one to which he or she has been

assigned in terms of this section and any liability to such person shall be satisfied out of the assets of that Sub-Fund.”

5.7. by the insertion of the following subsection (5):

“If, as a consequence of the operation of section 14(1), a member ceases to be a member assigned to one Sub-Fund and becomes a member assigned to another Sub-Fund, the assets and liabilities, rights and obligations as contemplated in sub-section 4(d) must be transferred from the member’s former Sub-Fund to the member’s new Sub-Fund.”

5.8. by the insertion of the following subsection (6):

“In respect of each Sub-Fund –

- (a) A Sub-Fund Committee must be established in terms of the Rules to exercise such powers and fulfill such responsibilities as are conferred upon it in terms of sub-section (7) and the Rules;
- (b) Special Rules must be established which must provide for -
 - (i) the rate at which members assigned to the Sub-Fund are required to contribute to the Transport Pension Fund; and
 - (ii) the rate at which Employers of members assigned to the Sub-Fund are required to contribute to the Transport Pension Fund; and
 - (iii) the benefits payable by the Transport Pension Fund to the members assigned to the Sub-Fund and to the persons contemplated in subsection (4)(b) and (c), and
 - (iv) matters incidental to the matters referred to in (i) to (iii) above.”

5.9. by the insertion of the following subsection (7):

“Notwithstanding anything to the contrary in the Rules, the Sub-Fund Committee of each Sub-Fund will have the power and responsibility to -

- (a) exercise control over and manage the Sub-Fund in the best interests of the Transport Pension Fund with due regard for the interests of the members, Pensioners and Dependant Pensioners and Employers assigned to the Sub-Fund;
- (b) determine by agreement with the applicable Principal Employer and implement the investment policy and strategy to be applied to the assets assigned to the Sub-Fund;
- (c) determine how benefits payable on the death of a member assigned to the Sub-Fund are to be allocated amongst his or her dependants and/or other beneficiaries;
- (d) determine whether a person who claims a benefit for which a Sub-Fund is alleged to be liable is entitled to that benefit;
- (e) exercise such powers as the Minister may by regulation confer upon the Sub-Fund Committee;
- (f) exercise such powers as the board of trustees of the Transport Pension Fund may delegate to the Sub-Fund Committee.

and any benefit, cost, loss sustained or liability due to or incurred by the Transport Pension Fund as a whole but which is attributable to the Sub-Fund will be deemed to be a benefit, cost, loss sustained or liability due to or incurred by the Sub-Fund and will not be assigned to any other Sub-Fund or Sub-Funds.”

5.10. by the insertion of the following subsection (8):

“The General Rules of the Transport Pension Fund must provide for the treatment and where necessary, the allocation of all costs incurred by the fund, the administration of the fund, the valuation, the audit, the investment of the assets and all other matters related to the governance and management of the Transport Pension Fund.”

5.11. by the insertion of the following subsection (9):

“The administration of the Transport Pension Fund, insofar as it relates to the business of a Sub-Fund may, by agreement between the applicable Principal Employer and Sub-Fund Committee, be conducted separately from the administration insofar as it relates to the business of other Sub-Funds.”

5.12. by the insertion of the following subsection (10):

“The initial Special Rules of a Sub-Fund must provide for benefits and rates of contribution applicable to its members, Pensioners, Dependant Pensioners and other beneficiaries which are the same as those which were applicable to them immediately before the establishment of the Sub-Fund.”

5.13. by the insertion of the following subsection (11):

“The applicable Principal Employer will be liable to the members, Pensioners, Dependant Pensioners and other beneficiaries of the Sub-Fund for the payment of benefits due to them in terms of the applicable Special Rules in the event and to the extent that the assets assigned to the Sub-Fund are not sufficient to meet the benefits due.”

5.14. by the insertion of the following subsection (12):

“No Employer will have any liability to the Transport Pension Fund in respect of or to a member, Pensioner, Dependant Pensioner or other beneficiary of the Transport Pension Fund which is assigned to a Sub-Fund to which that Employer is not attributable.”

5.15. by the insertion of the following subsection (13):

“The Rules of the Transport Pension Fund may provide for the transfer to an insurer registered as such in terms of the Long-Term Insurance Act, 1998, of the

liability of the fund to pay a pension in terms of a retirement annuity policy issued in the name of the Pensioner or Dependant Pensioner.”

Amendment of section 6 of Act 62 of 1990

6. Section 6 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 -

6.1. by the substitution for its heading of the following heading:

“Actuarial evaluation of the Transport Pension Fund”

6.2. by the replacement of subsection (1) by the following subsection:

“The Transport Pension Fund shall be valued by a [in actuary] valuator, appointed by the Minister, within three years from the operative date of this Act and thereafter by a valuator appointed by the trustees of the fund at intervals, [in the discretion of the Minister] of not more than three years.”

6.3. by the insertion of the following new subsection (1A) immediately after subsection (1):

“With effect from the date of commencement of the Transnet Pension Fund Amendment Act, 2006, for the purposes of each actuarial valuation each Sub-Fund must be subject to actuarial valuation as if it were a separate legal entity.

6.4. by the replacement of subsection (2) by the following subsection (2):

“The report of the [actuary] valuator shall comply with the requirements [set out in section 16 (7) of the Pension Funds Act, 1956,] applicable to the valuation of retirement funds subject to the Pension Funds Act, 1956 (Act No. 24 of 1956) or any statute which replaces it and shall be submitted by the valuator to the Minister and the Minister of Finance.”

6.5. by the replacement of subsection (3) by the following subsection (3):

“A copy of the report shall be submitted by the [actuary] valuator to [the] each [e]Employer.”

6.6. by the deletions of subsections (4) and (5).

Amendment of section 7 of Act 62 of 1990

7. Section 7 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005:

7.1. by the substitution for its heading of the following heading:

“Benefits from [the Fund] the Transport Pension Fund not assignable or executable”

7.2. by the replacement of the section by the following section:

“No pension or lump sum from the Transport Pension Fund or right to such a benefit, or right in respect of contributions made by a member or on his behalf, shall be capable of being assigned or transferred or otherwise ceded, or of being pledged or hypothecated, or be liable, subject to the provisions of section 7 of the Divorce Act, 1979, and the Maintenance Act, 1988, to be attached or subjected to any form of execution under a judgment or order of a court of law, and in the event of the beneficiary attempting to assign, transfer or otherwise cede or to pledge or hypothecate a benefit or right, payment thereof may be withheld, suspended or entirely discontinued, if the Transport Pension Fund so determines, provided that the Transport Pension Fund may make payment of such benefit or of any benefit in pursuance of such contributions or part thereof to one or more of the dependants of the beneficiary or to a trustee for such dependant or dependants during such period as it may direct.”

Amendment of section 8 of Act 62 of 1990

8. Section 8 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005

8.1. by the substitution for its heading of the following heading:

“How pensions from the Transport Pension Fund are affected by insolvency”

8.2. by the replacement of subsection (1) by the following subsection:

“If the estate of any person [**in receipt of a pension from**] entitled to a benefit in terms of the rules of the Transport Pension Fund (including the estate of a member entitled to an annuity purchased by the Transport Pension Fund from an insurer for that member) is sequestrated or surrendered or assigned for the benefit of his creditors, any benefit payable to the person shall not form part of the assets in the insolvent estate of that person and payment of the pension or other benefit shall forthwith be discontinued, provided that in any such case all or any part of the pension or other benefit shall be paid to or for the benefit of all or any of the following persons, namely, the pensioner, his wife or minor child or, failing a wife or minor child, to the mother of an illegitimate child or any child, whether legitimate or adopted or illegitimate, or other relative dependent on him, provided further that, if the payment is made to the pensioner, it shall be for his own personal use and may not in any way be attached or appropriated by the trustee of his insolvent estate or by his creditors, notwithstanding anything to the contrary in any law relating to insolvency.”

Amendment of section 9 of Act 62 of 1990

9. Section 9 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005:

9.1. by the substitution for its heading of the following heading:

“Recovery of certain debts due to an [e]Employer from benefits payable to members on their dismissal or retirement””

9.2. by the replacement of the section by the following section 9:

“If a member of the Transport Pension Fund—

- (a) is dismissed on account of fraud or dishonesty;
- (b) resigns or absconds in order to avoid dismissal on account of fraud or dishonesty, or in anticipation of a disciplinary or a criminal charge involving fraud or dishonesty being laid against him; or
- (c) leaves the employ of [the] an [e]Employer for any reason, or dies, before any loan or advance (other than a loan referred to in section 10 of this Act) made to him at his specific written request by an [the e]Employer or from the Benevolent Fund referred to in section 23 of the South African Transport Services Conditions of Service Act, 1988, has been repaid in full,

the Transport Pension Fund shall have the right to recover on behalf of the [e]Employer from any benefit payable from the Transport Pension Fund to such former member or his estate or to some other person in respect of his death, the amount of any loss, as determined by the E[e]mployer, which the latter may have sustained by reason of such theft, fraud or dishonesty on the part of the member, or the unpaid balance of such loan or advance, as the case may be, provided that the onus of proving that a member resigned or absconded for any reason mentioned in paragraph (b) shall be on the [e]Employer.”

Amendment of section 10 of Act 62 of 1990

10. Section 10 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by the replacement of the section by the following section 10:

“If in any agreement between [the] an E[e]mployer, or another entity which provides housing finance which entity is approved by the board of trustees of the Transport Pension Fund, and a member of the Transport Pension Fund in terms of which the member purchases from the Employer any dwelling-house or in terms of which the member is to receive any loan from the E[e]mployer or the aforementioned entity in order to acquire land for the purpose of erecting a dwelling-house thereon or to acquire or erect a dwelling-house or to discharge any bond over any land or dwelling-house owned by the member, it is provided that—

- (a) if for any reason the member retires on a pension, then and at the discretion of the aforementioned Employer the employer or] the Transport Pension Fund may,

upon the member so retiring commute in a cash sum such portion of the pension as may be necessary to liquidate any amount payable—

- (i) under such agreement; or
- (ii) in pursuance of any insurance entered into by the [e]Employer in connection with the repayment of any amount under such agreement,

which remains unpaid at the date of his retirement **[or dismissal]**, the Transport Pension Fund may, upon the member so retiring **[or being dismissed or retired]**, effect such commutation with a consequent reduction in pension benefits and, on behalf of the [e]Employer or entity, apply such first-mentioned amount towards the liquidation of the amount so remaining unpaid; or

- (b) if for any reason the member **[resigns voluntarily or is dismissed or retired otherwise than on pension]** ceases to be employed by an Employer and is not immediately thereafter employed by another Employer or if the member dies before retirement, the [e]Employer or the Transport Pension Fund may, apply any money due under this Act to him or his successor in title in respect of such property or of his interest in such property, towards the liquidation of any amount payable—

- (i) under such agreement; or
- (ii) in pursuance of any insurance entered into by the [e]Employer in connection with the repayment of any amount under such agreement,

which remains unpaid at the date of **[his voluntary resignation, dismissal, retirement]** that termination of employment or death, the Transport Pension Fund may on behalf of the [e]Employer or entity, upon the **[member so voluntarily resigning or being dismissed or retired]** member's termination of employment or upon his death, as the case may be, so apply the said money with a consequent reduction in pension benefits, provided that the Transport Pension Fund shall not so apply out of money so due to any such successor an amount in excess of the amount which bears to the total amount so remaining unpaid the same proportion as the value of such successor's share or interest in property bears, in the opinion of the Transport Pension Fund, to the value of the whole thereof, provided further that no benefit payable to a widow or widower shall be so applied.”

Amendment of section 11 of Act 62 of 1990

- 11. Section 11 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by the replacement of the section by the following section 11:

“The Transport Pension Fund and the Transnet Second Defined Benefit Fund **[is]** are hereby empowered to recover money due by a pensioner to Transmed (the medical scheme referred to in section 10 (2) of the Legal Succession to the South African Transport Services Act, 1989) in terms of the Transmed Rules and to pay such money to Transmed.”

Amendment of section 12 of Act 62 of 1990

12. Section 12 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by the replacement of the section by subsections (1) and (2) as follows:

- “(1) The obligations of **[the Company] Transnet** and the State in respect of the New Fund and the Pension Fund in terms of section 3 (2) and section 16 of the Legal Succession to the South African Transport Services Act, 1989, shall be deemed to be obligations towards the Transport Pension Fund and the Transnet Second Defined Benefit Fund in such proportions as determined by **[the State Actuary]** a valuator appointed by the Minister in consultation with the valuator appointed by the Transport Pension Fund and the **[actuary]** valuator appointed by **[the Company] Transnet.**”
- (2) Transnet guarantees the financial obligations of the Transnet Second Defined Benefit Fund.”

Amendment of section 13 of Act 62 of 1990

13. Section 13 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by the replacement of the section by –

13.1. the replacement of subsection (1) by the following subsection (1):

“The Registrar of Pension Funds may, on request by the Transport Pension Fund register the Transport Pension Fund in terms of section 4 of the Pension Funds Act, 1956, and may, for the purposes of such request, regard the Fund as a “pension fund organization” as defined in section 1 (1) of that Act.

13.2. the replacement of subsection (2) by the following subsection (2):

- (1) The Registrar of Pension Funds may, on request by the Transport Pension Fund register the Transport Pension Fund in terms of section 4 of the Pension Funds Act, 1956, and may, for the purposes of such request, regard the Fund as a “pension fund organization” as defined in section 1 (1) of that Act.
- (2) Upon such registration—
- (a) the whole of the Pension Funds Act, 1956, shall become applicable to the Transport Pension Fund; and
- (b) the provisions of sections [5] 7 to 11 of this Act shall cease to be applicable; **[and]**
- [(c) the Fund shall, for the purposes of the application of the Income Tax Act, 1962, no longer be regarded as a pension fund as defined in paragraph (a) of the definition of “pension fund” in section 1 of that Act.]**

Amendment of section 14 of Act 62 of 1990

14. Section 14 of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by -

14.1. by the substitution for its heading of the following heading:

“Employees of companies forming part of Employer groups of companies”

14.2. by the replacement of subsection (1) by the following subsection (1):

- “(1) Any employee of any **[of the companies which form part of the group of companies]** Employer who is a member of **[the Fund]** the Transport Pension Fund or the Transnet Retirement Fund, may subject to the rules applicable to that fund, continue to enjoy membership of **[the Fund]** that fund [if]
- (a) if he or she continues to be employed by an Employer; or
 - (b) if he [is transferred or seconded from one company which forms part of the group of companies to another company which forms part of the group of companies] or she becomes employed by another Employer as a consequence of the assignment of employment to that other Employer in terms of section 197 of the Labour Relations Act or any section or statute that replaces it.”

14.3. the replacement of subsection (2) by the following subsection (2):

- “(2) With effect from the date of commencement of the Transnet Pension Fund Amendment Act, 2006, [Any] no employee of [any of the companies which form part of the group of companies, may, subject to the Rules,] an Employer who is not already a member of the Transport Pension Fund or the Transnet Retirement Fund as at the date on which on which the transaction contemplated in subsections (1)(a) or (b) to which he or she is subject becomes effective; may become a member of [the Fund] the Transport Pension Fund or the Transnet Retirement Fund; provided that new employees of Employers in the Transnet Group of Employers may become members of the Transnet Retirement Fund if its rules so allow.”

14.4. the deletion of subsections (3) and (4);

14.5. the insertion of a new subsection (3) as follows:

“If an Employer ceases to be an Employer as defined its employees who are members of the Transport Pension Fund or the Transnet Retirement Fund will cease to be members of the applicable fund.”

14.6. the insertion of a new subsection (4) as follows:

“If an employee who is a member of the Transport Pension Fund or the Transnet Retirement Fund ceases to be employed by an Employer, other than -

(a) in the circumstances contemplated in sub-section (1); or

(b) as a consequence of retirement,

he or she shall cease to be a member of that fund.”

Amendment of section 14A of Act 62 of 1990

15. Section 14A of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by -

15.1. by the substitution for its heading of the following heading:

“Powers of [Company] Transnet to establish pension funds”

15.2. by the replacement of the word “Company” in its heading by the word “Transnet”;

15.3. The replacement of subsection (1) by the following subsection (1):

“In this section, “pension fund” means **[the]** a pension fund contemplated in subsection (2).”

15.4. The replacement of subsection (2) by the following subsection (2):

“Notwithstanding the establishment of the [Transnet] Transport Pension Fund in terms of section 2 (1), **[the Company] Transnet** may, subject to the approval of the Minister, acting with the concurrence of the Minister of Finance, by notice in the Gazette establish **[a]** pension funds.”

15.5. The replacement of subsection (3) by the following subsection (3):

“**[The]** A pension fund established in terms of subsection (2) shall be vested with legal personality and shall be capable of owning assets, incurring liabilities, suing or being sued in its own name and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its functions in terms of its particular rules.”

15.6. The replacement of subsection (4) by the following subsection (4):

“The control and management of the pension fund, admission to and termination of membership, the amount and nature of contributions by members and contributions and other payments by an **[e]**Employer and the benefits due to pensioners and beneficiaries as well as the manner in which the rules of such pension fund may be amended, shall be governed by the particular rules of such pension fund.”

- 15.7. The replacement of subsection (6) by the following subsection (6)

“The rules of **[the]** a pension fund, as amended from time to time, shall bind **[the]** each [e]Employer which employs members of the pension fund or which employed persons who were members of the pension fund immediately before their retirement or disablement, the members, pensioners, and beneficiaries of such pension fund and the pension fund.”

- 15.8. The replacement of subsection (7) by the following subsection (7):

“**[The]** A pension fund is deemed to be a pension fund as defined in paragraph (a) of the definition of “pension fund” in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).”

- 15.9. The replacement of subsection (8) by the following subsection (8):

“All the provisions of sections 6, 7, 8, 9, 10, 11, 13, 14 of this Act apply with the changes required by the context to a pension fund.”

Amendment of section 14B of Act 62 of 1990

16. Section 14B of the Transnet Pension Funds Act, 1990, is hereby amended with effect from 11 November 2005 by -

- 16.1. the insertion of the word “Transnet” before, and the words “Defined Benefit” after the word “Second” wherever it appears in the section;
- 16.2. the replacement of subsection (2) by the following subsection:

“Pensioner members of the Transnet Pension Fund as at the date of commencement of the Transnet Pension Fund Amendment Act, No. 41 of 2000 are hereby transferred from the Transport Pension Fund to the Transnet Second Defined Benefit Fund.”

- 16.3. by the replacement of subsection (3) by the following subsection:

“All the assets, liabilities, rights and obligations pertaining to the members referred to in subsection (2), as determined by the State Actuary in consultation with a **[n actuary]** valuator appointed by the Transport Pension Fund and a **[n actuary]** valuator appointed by **[the Company]**Transnet, shall vest in and devolve upon the Transnet Second Defined Benefit Fund without any formal transfer or cession with effect from the date of publication of such determination in the Gazette by the Minister.”

Insertion of new section 15A into of Act 62 of 1990

17. The following new section 15A is inserted with effect from 11 November 2005:

“Minister’s power to make regulations

The Minister has the power to make regulations not inconsistent with this Act which in his or her opinion are necessary or expedient in order that the purposes of this Act may be achieved.”

Short Title

18. This Act is called the Transnet Pension Fund Amendment Act, 2006 and shall come into operation on a date to be stipulated by the Minister in the *Gazette*.
